

REMARKS

Upon entry of the present Amendment, claims 1-5, 18-28, and 30 will be pending. Claim 1 has been amended. No new matter is added and in fact, the amendment of claim 1 will not necessitate an additional search as the amendment in claim 1 is included in other independent claims and thus has already been searched. Claims 1-5, 18-28, and 30 are rejected under 35 U.S.C. §103(a). Applicants respectfully traverse the rejections and submit that all pending claims are in condition for allowance.

Common Assignment of Chien

In the Office Action mailed January 17, 2007, U.S. Patent Publication 2001/0165972 issued to Chien et al. is used to support the rejection of claims 1-5 and 18-24 under 35 U.S.C. 103(a). Applicants respectfully submit that Chien is disqualified as prior art for a §103(a) rejection under §103(c). Applicants submit that this application and Chien were both assigned or subject to assignment, at the time this invention was made, to AT&T Wireless Services, Inc and/or a successor in interest to such entity. Chien is applied only under 35 U.S.C. §102(e). Therefore, Chien cannot be used in any rejection based on §103(a). In the absence of Chien as prior art, the rejections of claims 1-5 and 18-24 under §103 must fail. Withdrawal of the rejections of claims 1-5 and 18-24 as being obvious in view of the Chien application is respectfully requested. Applicants submit that the statement above regarding the common assignment of Chien and the present application is sufficient evidence to establish common ownership of, or obligation of assignment to, the same person or organization, as required by MPEP §706.02(l)(2)(II) and 1241 O.G. 96 (December 26, 2000).

Rejection of Claims under 35 U.S.C. §103(a)

Notwithstanding the removal of Chien as a reference, Applicants will nonetheless address the substantive rejections set forth by the Examiner in the present office action. In the final office action mailed January 17, 2007, claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,991,410 issued to Albert et al. (hereinafter referred to as "Albert") in view of U.S. Patent 5,889,781 issued to Eftimakis et al. (hereinafter referred to as "Eftimakis") in further view of U.S. Patent Publication 2001/0165972 issued to Chien et

al. (hereinafter referred to as “Chien”). Claim 18 is rejected under 35 U.S.C. 103(a) over Albert as applied to claim 1, in view of Eftimakis, Chien, and Schneier (Applied Cryptography) (hereinafter referred to as “Schneier”). Claim 25 is rejected under 35 U.S.C. 103(a) over Albert as applied to claim 1, in view of U.S. Patent 5,243,653 issued to Malek et al. (hereinafter referred to as “Malek”) in further view of U.S. Patent 5,060,266 issued to Dent (hereinafter referred to as “Dent”). Applicants respectfully traverse these rejections and submit that Albert does not teach the elements of these claims as currently amended.

Applicants have amended claim 1 to further clarify the subject matter disclosed. Amended claim 1 recites, in relevant part: “processing a message for transmission, wherein the message for transmission includes control data and payload data, and wherein the control data is not encrypted and contains a particular control message, and wherein the particular control message is used to provide at least one other control function”. Applicants find support for the amendment in at least paragraph [0026] of the as-filed specification. As amended claim 1 indicates, the control message disclosed is used to provide at least one other control function beyond synchronizing encryption.

Applicants respectfully submit that Albert does not teach the elements of amended claim 1, or claim 18 or 25, as asserted by the Office Action. As specified by the Examiner, Albert discloses:

If an encryption flag is set in the ROM or RAM of the wireless adaptor 200 then the data is to be encrypted. The wireless adaptor 200 checks the encryption flag in step 908 and either encrypts the data frame in step 910 or does not encrypt the data frame. The encryption which is used is intended to hide the data from a casual observer or attempt to discover the contents of the data frame. Such encryption may be simple, such as XORing the data frame with a pattern, scrambling the bit order of the data frame or other simple data hiding mechanisms, or may be complex, such as the application of DES or RSA encryption to the data, as well known and practiced in the field or as developed from time to time. (*Albert column 16 lines 55-67*)

As shown in FIG. 13, the data frames transmitted by the host computer 500 to the wireless adaptor 200 may also be compressed and/or encrypted, requiring decryption and decompression of the data frame. In step 920 the wireless adaptor 200 waits for a data frame and collects a data frame from the

host computer 500 in step 922. The wireless adaptor 200 checks a flag contained in a header of the data frame in decision 924 which indicates if the data frame is encrypted or not. If the data frame is encrypted, the wireless adaptor decrypts the data frame in step 926 using an algorithm selected to recover the pre-encryption data from the encrypted data frame. (*Albert column 17 lines 12-23*)

Applicants submit that Albert does not teach that a control message used to synchronize encryption is also used to provide at least one other control function. Specifically, amended claim 1 recites “wherein the particular control message is used to provide at least one other control function.” Claim 18 recites “wherein the particular control message is used according to a wireless communication protocol to provide at least one other control function under the wireless communication protocol.” Claim 25 recites “the particular unencrypted control message is used according to a wireless communication protocol to provide at least one other control function under the wireless communication protocol.” Rather, Albert teaches only to check for a flag for encryption in the header of a data frame, and encrypt or decrypt the data in that frame based on the state of the flag. The flag is not disclosed in Albert to serve any function other than to indicate whether the frame associated with the flag is to be encrypted or not. This is different from the present invention as disclosed in claims 1, 18 and 25 because the control message that initiates encryption or decryption also fulfills at least one other control function under the wireless communication protocol. Applicant respectfully asserts that the Examiner has not met his burden in this regard.

As to the rejection of claim 25, Applicants further submit that Albert does not teach “the particular unencrypted control message occurs just before the transmission of telephony data” as recited in claim 25 of the present application. Rather, Albert teaches the use of an encryption flag contained within the header of a frame. Such a flag is necessarily transmitted with the rest of the frame since it is in the header of the frame. The present invention is different from Albert because it discloses a separate control message that initiates the encryption or decryption process. That process is then applied to the telephony data transmission that follows the control message. The present invention discloses an encryption-initiating control message separate and distinct from the telephony data

messages, unlike in Albert, where a flag is paired with each data frame to be encrypted, and the flag is transmitted with the data, not before it.

Applicants submit that the combination of Albert, Eftimakis and Chien does not teach all of the elements of amended independent claim 1; that the combination of Albert, Eftimakis, Chien, and Schneier does not teach all the elements of independent claim 18; and that the combination of Albert, Malek and Dent does not teach all the elements of independent claim 25. Therefore, the combination of such references cannot render obvious claims 1, 18 and 25 under 35 U.S.C. 103(a). Specifically, these combinations fail to disclose the use of the control message for at least one other control function beyond synchronization of encryption and decryption. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 18 and 25 over Albert.

Claims 2-5, 19-24, 26-28 and 30 are dependant, directly or indirectly, from claims 1, 18 and 25, respectively. For at least the same reasons discussed above with respect to the rejection of claims 1, 18 and 25, Applicants respectfully request withdrawal of the rejection and subsequent allowance of claims 2-5, 19-24, 26-28 and 30.

Applicant notes the combination of references (including Chien) but does not concede that such a combination is proper. As such, Applicants respectfully reserve the right to challenge such combination as not being supported by any motivation, teaching or suggestion to do so.

Applicant notes that this rejection is final. Applicant has diligently prepared a complete response and filed the same prior to the two-month date. Applicant respectfully urges entry of the enclosed amendment and subsequent allowance as such an amendment will not provoke or necessitate an additional search because the subject matter of the amendment is already included in other claims and has been searched.

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**PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116**

CONCLUSION

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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